

Reconsideration of the above-identified application is requested in view of the following remarks.

REMARKS

Status of the Claims

Claims 1-8 are pending. Claims 1-8 have been finally rejected.

Based on the following remarks, Applicant respectfully requests that the Examiner reconsider all outstanding rejections and that they be withdrawn.

Finality of Office Action

The Examiner has made this Office Action Final stating, "Applicant's amendment necessitated the new ground(s) of rejection presented." See Final Office Action, dated January 23, 2007, at page 4, paragraph no. 7. Applicant respectfully points out that no amendments to the claims were presented in the response to the last Office Action. See Reply dated December 19, 2006. Furthermore, Examiner has presented new grounds of rejection. Specifically, claims 1-4 and 6-8 are now rejected under 35 U.S.C. § 103(a) as being unpatentable over Montalto et al. in view of Preziosi et al. and claim 5 is now rejected under 35 U.S.C. § 103(a) as being unpatentable over Montalto et al. and Preziosi in view of Andersen. The Examiner did not previously present these rejections.

According to the M.P.E.P., "second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement." See M.P.E.P §706.07(a), Eighth Edition, Rev.

Aug. 2005 at page 700-82 (emphasis added). Clearly, Applicant's amendments to the claims in the Response filed August 24, 2006, did not necessitate the new grounds of rejection, for if they had, the Examiner should have presented these new rejections in the Office Action dated October 25, 2006.

As such, Applicant strenuously asserts that the finality of this Office Action is improper and respectfully requests reconsideration and removal thereof.

Rejections under 35 U.S.C. § 103

The Examiner has rejected claims 1-4 and 6-8 under 35 U.S.C. § 103(a) as being unpatentable over Montalto et al. (U.S. Pat. No. 3,542,519) in view of Preziosi et al. (U.S. Pat. No. 4,788,151). Applicant traverses this rejection.

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." See M.P.E.P § 2143.03, Eighth Edition, Rev. Aug. 2005 at page 2100-139 (emphasis added). Currently pending claim 1 is directed to, "[a] timing device for visually determining the passage of a preselected period of time comprising: a redox indicator deposited within a matrix and in combination with a reactable metal ion, said matrix being exposable to air such that over a period of time during exposure to air, the redox indicator changes color and thereby indicates the passage of a predetermined period of time." See claim 1 (emphasis added). As such, it is clear that the claims are directed to a timing device which combines a redox indicator and a reactable metal ion. There is simply no indication whatsoever in Montalto et al. that the disclosed time indicator comprises both a redox indicator and a reactable metal ion. In fact, according to Montalto et al., "[i]n general, redox indicators with normal

oxidation potentials of +0.76 volt or smaller are useful. The normal potential is expressed with reference to the potential of the normal hydrogen electrode. As thus expressed, the ferrous-ferric ion couple has a normal oxidation potential of +0.76.” There is no other disclosure in Montalto et al. of metal ions. Applicant respectfully asserts that this brief disclosure of a ferrous-ferric ion couple in Montalto et al. is simply meant to exemplify the volt potential of useful redox indicators. Montalto et al. lists useful redox indicators at col. 5, lines 44-53. None of these listed useful redox indicators comprises a redox indicator and a reactable metal ion, and there is no indication that these redox indicators can be combined with a reactable metal ion.

Preziosi et al. does not overcome this deficiency. While Preziosi et al. does teach the use of various metals (See Preziosi et al. col. 3, lines 11-31), Preziosi et al. does not suggest the use of these metals in combination with a redox indicator, as presently claimed by Applicant. According to Applicant’s specification, the redox indicator and metal ion form a redox couple. See Specification at page 4, second paragraph. Whereas, according to Preziosi et al., “the effective complexing metals of the present invention are those whose cations complex with the acetylenic compound.” See Preziosi et al., col. 3, lines 12-14. There is simply no teaching, suggestion or motivation of forming a redox coupling with a redox indicator and a reactable metal ion whatsoever. Furthermore, there is no suggestion that the acetylenic compound of Preziosi et al. is in anyway analogous to the redox indicator presently claimed.

As such, Applicant respectfully asserts that the combination of Montalto et al. and Preziosi et al. does not teach all the claim limitations of claim 1, as presently pending, and thus, do not and cannot render the presently claimed invention obvious. Claims 2-4

and 6-8, which depend either directly or indirectly from claim 1 are likewise not rendered obvious by the combination of Montalto et al. and Preziosi et al.

Reconsideration and withdrawal of this rejection are respectfully requested.

The Examiner has rejected claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Montalto et al. (U.S. Pat. No. 3,542,519) and Preziosi et al. (U.S. Pat. No. 4,788,151), and further in view of Anderson (U.S. Pat. Appl. Pub. No. 2005/0078557).

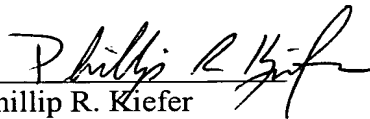
As Applicant demonstrated hereinabove, the combination of Montalto et al. and Preziosi et al. does not disclose all of the claim limitations of the presently claimed invention. Specifically, neither Montalto et al. or Preziosi et al. nor the combination of Montalto et al. with Preziosi et al. disclose or suggest the combination of a redox indicator and a reactable metal ion in a timing device.

The Examiner has cited Andersen to overcome the deficiencies of Montalto et al. and Preziosi et al. Specifically, the Examiner states that, "it would have been obvious to one of ordinary skill... to add the adhesive disclosed by Andersen to the indicator disclosed by Montalto et al." See Final Office Action dated January 23, 2007, at page 3, second to last paragraph. However, Applicant respectfully points out that the combination of Montalto et al., Preziosi et al. and Andersen does not teach or suggest all the claim limitations of the presently claimed invention. Moreover, like Montalto et al. and Preziosi et al., Andersen does not teach or suggest the use of a redox indicator and a reactable metal ion whatsoever.

As such, Applicant asserts that the combination of Montalto et al. and Andersen cannot and does not render claim 5 obvious. Reconsideration and withdrawal of this rejection are respectfully requested.

Respectfully submitted,

2/16/07
Date


Phillip R. Kiefer
Reg. No. 55,326

Frenkel & Associates, P.C.
3975 University Drive, Suite 330
Fairfax, VA 22030
Telephone: (703) 246-9641
Facsimile: (703) 246-9646